

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

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BRANDON MATTHEW ALWELL #595251

CIVIL ACTION NO. 20-465 SEC P

VERSUS

JUDGE ELIZABETH E. FOOTE

JAMES M. LEBLANC, ET AL.

MAGISTRATE JUDGE HORNSBY

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**ORDER**

Before the Court is Defendants' motion to strike two of Plaintiff's filings. Record Document 128. First, Plaintiff's reply to Defendants' response to Plaintiff's objection to the Report and Recommendation issued by the Magistrate Judge. Record Document 125. Second, a declaration filed with the reply. Record Document 126.

Defendants argue that the reply should be stricken pursuant to Federal Rule of Civil Procedure 12 because it was not authorized and because Plaintiff did not seek leave of court before filing. Record Document 128-1 at 2. They argue that the declaration should be stricken because it is not in compliance with Federal Rule of Civil Procedure 6(c)(2) and because allowing it to be filed is prejudicial to them. *Id.* at 3-4.

Rule 12(f) allows a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Federal Rule of Civil Procedure 7(a) defines "pleading" to include a complaint and an answer to a complaint. It does not include a reply memoranda. *Smith v. Delta Fuel Co., Inc.*, No. 1:17-CV-01690, 2018 WL 3827481, at \*3 (W.D. La. July 20, 2018), *report and recommendation adopted*, No. 17-CV-01690, 2018 WL 3827335 (W.D. La. Aug. 10, 2018) (denying a motion to strike a motion to dismiss on the grounds that a motion to dismiss is not a "pleading"); 5 Charles

Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1380 (3d ed. 2020) (“Rule 12(f) motions only may be directed towards pleadings as defined by Rule 7(a).”). Thus, Defendants’ motion to strike the reply on these grounds is denied. Nevertheless, Plaintiff’s reply memoranda was not permitted and he did not seek leave to file the reply and, therefore, the Court will not consider Record Document 125.

Plaintiff also filed a supplemental declaration at the same time that he filed the unauthorized reply to Defendant’s opposition to Plaintiffs’ objection to the Magistrate Judge’s Report and Recommendation. This filing likewise fails to conform with the rules of civil procedure. Further, allowing Plaintiff to submit additional evidence at this juncture—after he has had the benefit of seeing the Magistrate Judge’s Report and Recommendation and Defendants’ opposition to his objection to the Report and Recommendation—is prejudicial to Defendants. Hence, the Court will not consider Record Document 126.

For the reasons stated herein, Defendants’ motion to strike [Record Document 128] is **GRANTED**. The Court will not consider Record Documents 125 or 126.

**THUS DONE AND SIGNED** this 6th day of August, 2021.

  
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ELIZABETH E. ERNY FOOTE  
UNITED STATES DISTRICT JUDGE